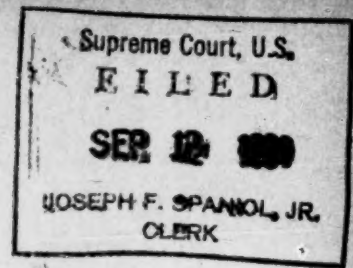


(2)

No. 90-220



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

RUDOLPH de SOUZA
and
RD/INTERNATIONAL, INC.

Petitioners,

vs.

WANDA L. SCHULTZ

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

RESPONDENT'S BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

QUESTION PRESENTED

- I. Whether any jurisdictional basis exists for the granting of a petition for writ of certiorari under 28 U.S.C. §1257.



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The respondent, Wanda L. Schultz, respectfully requests that this court deny the petition for writ of certiorari seeking review of the Supreme Court of Virginia's opinion in this case.

STATEMENT OF CASE

This petition for writ of certiorari arises from a dismissal of an appeal by the Supreme Court of Virginia from a judgment in the Circuit Court of Arlington County Virginia. The Respondent, Wanda L. Schultz (Schultz), a 25 year employee of the Department of Navy, accepted a position as Executive Vice President of Petitioner, RD/International in October, 1987. In accepting the position, Mrs. Schultz relied on a promise from Rudolph de Souza (de Souza), President of RD/International, of five years of employment with RD/International.

After a relatively short period of time, de Souza began to sexually harass

and ultimately sexually assault Schultz. Schultz rejected these advances. In early 1988, de Souza terminated Schultz's salary. Schultz left RD/International in March, 1988.

Suit was brought by Schultz against RD/International, Rudolph de Souza, and Georgianna de Souza for breach of contract, intentional infliction of emotional distress, assault, defamation, fraud, and failure to pay compensation. The jury returned a verdict in favor of Schultz, for breach of contract, intentional infliction of emotional distress, defamation, and failure to pay compensation. A motion to set aside the verdict was filed on behalf of defendants, RD/International and

Rudolph de Souza. The motion was denied by the presiding judge. The final order of judgment was entered on October 6, 1989.

A notice of appeal was filed November 1, 1989. A written statement of facts was untimely filed by de Souza, purportedly on behalf of RD/International, on December 6, 1989. An order rejecting the written statement was entered by the trial court on January 12, 1990.

A petition for appeal was filed with the Supreme Court of Virginia on January 4, 1990. The petition set forth arguments which were previously raised in the defendants' Motions for Summary Judgment and to Set Aside the Verdict. Specifically, the petition

challenged 1) the propriety and sufficiency of the evidence, 2) the exclusivity clause of the Virginia Workers' Compensation Act, and 3) the jury instructions and verdict.

On March 1, 1990, the Supreme Court of Virginia, finding no reversible error, refused the petition for appeal.

REASON WHY THE WRIT SHOULD BE DENIED

Petition for writ must be denied as it fails to meet the threshold jurisdictional requirements of 28 U.S.C. §1257.

28 U.S.C. §1257 provides in pertinent part:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity,

especially set up or claimed under the Constitution, treaties, or statutes of, or commission of, or authority exercised under the United States.

Review by this Court under Section 1257 is discretionary. The exercise of such discretion is appropriate only when there is a substantial federal question which has been properly raised in the State Courts¹. This test cannot be met by petitioners.

Question 4 presented by petitioners concerns an alleged violation of "basic rights guaranteed by the Fourth and Fourteenth Amendments." However, there is no explanation of what rights have been

¹ See remarks of Mr. Justice Brennan in *State Court Decisions and the Supreme Court*, 31 Penn., Bar Assn., Q. 393, 399-400 (1960).

denied to the petitioners or by whom. Rather, throughout the petition, the allegation is merely restated without providing any factual or legal support. Such assertions do not raise a substantial federal question.

The "federal questions" raised by petitioners were not raised at any point in the proceedings prior to the Petition for Writ of Certiorari. As set forth in the statement of case, all of the issues at trial were strictly statutory and common-law tort and contract actions. The exceptions raised by petitioners at the trial level, and again before the Supreme Court of Virginia, focused on the sufficiency of the evidence presented at trial, the propriety of the jury

instructions and the verdict, and questions surrounding the exclusivity clause of the Virginia Workers' Compensation Act. All of the actions in the trial were derived from state law and contained no federal issues. It is well established that:

the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.

Webb v. Webb, 451 U.S. 493, 496-497 (1981). Cardinale v. Louisiana, 394 U.S. 437, 438 (1969). Within this jurisdictional framework, the Court "cannot decide issues raised for the first time here." Webb, at 499; See Tacon v. Arizona, 410 U.S. 351, 352

(1973). Stanley v. Illinois, 405 U.S. 645, 658, N.10 (1972).

Assuming arguendo that this court were to conclude that the argument set forth in the petition raises some type of federal issue. There is no evidence that the issue now being raised by petitioner was ever brought before the state court for any type of resolution. The record is devoid of any evidence that a claim under a federal statute or the Federal Constitution was presented to the state courts. Consequently, the state courts were never given the opportunity to rule on this issue, nor was there an opportunity to develop any type of record prior to these issues

being raised in this court. See
Banker's Life & Casualty Co. v.
Crenshaw, 108 S.Ct. 1645 (1988).

CONCLUSION

Accordingly, the instant petition
should be dismissed for want of
jurisdiction.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Writ of Certiorari was mailed first class, postage prepaid, to Rudolph de Souza, P.O. Box 16750, Crystal City Station, Arlington, Virginia 22215, this _____ of _____, 1990.

MARNI E. BYRUM